

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x  
5 FERNANDO HERNANDEZ, KENNETH CHOW,  
6 BRYANT WHITE, DAVID WILLIAMS, MARQUIS ACKLIN,  
7 CECILIA JACKSON, TERESA JACKSON,  
8 MICHAEL LATTIMORE, and JUANY GUZMAN, Each  
9 Individually, And On Behalf Of All Other  
10 Persons Similarly Situated,

11 Plaintiffs,

12 -against-

13 Index No:  
14 12 CV 4339 (ALC) (JLC)

15 THE FRESH DIET, INC., LATE NIGHT EXPRESS  
16 COURIER SERVICES, INC. (FL), FRESH DIET EXPRESS  
17 CORP. (NY), THE FRESH DIET - NY INC. (NY),  
18 FRESH DIET GRAB & GO, INC. (FL) a/k/a  
19 YS CATERING HOLDINGS, INC. (FL) d/b/a  
20 YS CATERING, INC. (FL), FRESH DIET EXPRESS  
21 CORP. (FL), SYED HUSSAIN, Individually,  
22 JUDAH SCHLOSS, Individually, and ZAIMI DUCHMAN,  
23 Individually,

24 Defendants.  
25 -----x

26 EXAMINATION BEFORE TRIAL of  
27 the Plaintiff, TERESA JACKSON, taken by the  
28 Defendant, pursuant to Notice, held at the  
29 offices of Kaufman, Dolowich, Voluck & Gonzo  
30 LLP, 100 William Street, Suite 215, New York,  
31 New York 10038, on October 2, 2013, at  
32 1:48 p.m., before a Notary Public of the State  
33 of New York.

A P P E A R A N C E S:

THE HARMAN FIRM, PC

Attorney for Plaintiffs

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BY: PETER J. ANDREWS, ESQ.

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Woodbury, New York 11797

BY: YALE POLLACK, ESQ.

FILE #: 055611-0002

## 1 S T I P U L A T I O N S

2

3 IT IS HEREBY STIPULATED AND AGREED by and  
4 between the attorneys for the respective parties  
5 herein, that filing, sealing and certification,  
6 and the same are, hereby waived.

7

8 IT IS FURTHER STIPULATED AND AGREED that  
9 all objections except as to the form of the  
10 question, shall be reserved to the time of the  
11 trial.

12

13 IT IS FURTHER STIPULATED AND AGREED that  
14 the within deposition may be signed and sworn to  
15 by an officer authorized to administer an oath,  
16 with the same force and effect as if signed and  
17 sworn to before the Court.

18

19

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24

25

1 T. Jackson

2 A. PCF was same thing as the Connecticut  
3 one. It's 2:00 to 6:00 Monday through Friday  
4 and 2:00 to -- 2:00 to 8:00 Saturday and  
5 Sunday.

6 Q. A.m.?

7 A. Yes.

8 Q. Did you ever stop performing work for  
9 PCF?

10 A. Yes.

11 Q. When?

12 A. When the work at Fresh Diet became too  
13 much for me to handle because the routes -- the  
14 routes became bigger, so I didn't have time to  
15 get over to PCF.

16 Q. Do you know what month you stopped doing  
17 both?

18 A. No, I don't know that.

19 Q. There was a period of time where you  
20 were performing deliveries for both PCF and  
21 The Fresh Diet?

22 A. Yes.

23 MR. ANDREWS: Objection.

24 Q. Do you know how many months that was?

25 A. It wasn't long.

1 T. Jackson

2 own route?

3 A. At that time, I started doing  
4 Connecticut and New York by myself. She quit.

5 Q. Would you perform stops in both  
6 Connecticut and New York in the same night?

7 A. Yes. At that time, yes.

8 Q. How many stops were there when you got  
9 your own route?

10 MR. ANDREWS: Objection.

11 A. It varies.

12 Q. What would be the minimum number of  
13 stops?

14 A. Minimum, maybe twenty, twenty-five.

15 Q. What about the maximum?

16 A. Maybe about thirty, thirty-five.

17 Q. How far did you live, driving time, from  
18 the New Jersey facility?

19 A. Maybe thirty, forty minutes depending on  
20 traffic.

21 Q. When you finished a route when you were  
22 working from the New Jersey facility, did you  
23 go back to the New Jersey facility?

24 A. Not New Jersey, no.

25 Q. Where would you go after you were done?

1 T. Jackson

2 A. Home.

3 Q. Would you have the empty bags in your  
4 car?

5 A. Yes.

6 Q. Did you report to anyone at The Fresh  
7 Diet when you finished your route?

8 A. Sometimes Syed.

9 Q. Were there times that you did not  
10 report?

11 A. Sometimes, yes.

12 Q. What would make you report as opposed to  
13 not report on a given night?

14 A. Sometimes he would ask for us to report,  
15 and it depends on if there's any problems,  
16 maybe bad weather. It depends on whatever's  
17 going on during that time.

18 Q. There were times that nobody would have  
19 known from The Fresh Diet when you finished  
20 your route?

21 MR. ANDREWS: Objection.

22 A. At that time, I don't remember.

23 Q. Did the location of The Fresh Diet  
24 facility ever change from New Jersey to another  
25 location?

1 T. Jackson

2 A. Yes.

3 Q. And be finished sometime between  
4 3:00 a.m. and 6:00 a.m.?

5 A. Sometimes, yes.

6 Q. Were you ever done earlier than  
7 3:00 a.m.?

8 A. I don't think so.

9 Q. Did you ever start later than 6:00 p.m.?

10 A. Yes.

11 Q. What was the latest you would start?

12 A. The latest? That varies. I don't have  
13 an answer for you.

14 Q. Would you ever start at 7:00 p.m.?

15 A. Sometimes.

16 Q. Would you ever start at 8:00 p.m.?

17 A. Sometimes.

18 Q. Would you ever start at 9:00 p.m.?

19 A. Sometimes.

20 Q. Would you ever start at 10:00 p.m.?

21 Again, we're just focused on the  
22 Connecticut location right now.

23 A. In Connecticut, I really don't know. It  
24 depends on whenever we finished packing up and  
25 putting everything in our car.

1 T. Jackson

2 quick two-minute break?

3 MR. ANDREWS: Yes.

4 (Whereupon, a recess was taken  
5 at this time.)

6 Q. Going back to when you were in the  
7 Connecticut location, did you ever report back  
8 to the facility at the end of your route?

9 A. In Connecticut?

10 Q. Yes.

11 A. No.

12 Q. Would you ever report to anyone at  
13 The Fresh Diet that you had finished a delivery  
14 when they were at the Connecticut location?

15 A. Sometimes Syed.

16 Q. Sometimes you wouldn't?

17 A. Sometimes I wouldn't, no.

18 Q. When it was at the Siegel Street  
19 location, did you report back to the facility  
20 at the end of a route?

21 A. Yes, but I didn't -- I think that's when  
22 they started making us bring the bags back.

23 Q. Do you remember when that happened?

24 A. The date? No.

25 Q. The year?



1 T. Jackson

2 A. Maybe 2010, 2009.

3 Q. When you say "they started making us  
4 bring the bags back," what do you mean? How  
5 did that happen?

6 A. Well, that happened -- that started  
7 because they were calling us to come in early  
8 because they didn't have enough bags, so we  
9 would have to come in earlier sometimes to  
10 bring in our empties. So then that's when they  
11 started coming up with you had to come back at  
12 the end of the night to bring the empties back.

13 Q. Did you do that?

14 A. Come back at the end of the night?

15 Q. Yes.

16 A. Yes, sometimes. Not all the time,  
17 sometimes.

18 Q. If you ever didn't bring the bags back  
19 at the end of the night, were you ever  
20 disciplined?

21 A. At that time -- at that time, no,  
22 because I lived close by, so I would bring them  
23 early the next day.

24 Q. Did you ever enter into any type of  
25 agreement with Late Night Express?

1 T. Jackson

2 Q. You would start?

3 A. I started at 2:00 in the morning.

4 Q. When you started at 2:00 in the morning,  
5 do you remember how many times that happened?

6 A. That happened once.

7 Q. Other than that one occasion, would you  
8 ever show up at 1:00 in the morning?

9 A. No.

10 Q. Midnight?

11 A. No. Show up to pick up my bags? No.

12 Q. What was the latest, other than that one  
13 occasion, that you would start performing  
14 deliveries?

15 MR. ANDREWS: Objection.

16 A. That varies. 10:00, 9:00. It depends  
17 on what needed to be done that day.

18 Q. 10:00 p.m. or 9:00 p.m.?

19 A. Yeah.

20 Q. What was the earliest you would be done  
21 with your deliveries?

22 A. Earliest?

23 Q. Now we're focused on the Siegel Street  
24 location.

25 A. The earliest? The earliest, maybe 3:00

1 T. Jackson

2 or 4:00 depending on how many stops and miles I  
3 have for the night.

4 Q. What about the latest?

5 A. Anywhere from 5:00 to 6:00 in the  
6 morning.

7 Q. Did you have a regular last stop when  
8 you were performing deliveries from the  
9 Siegel Street location?

10 A. Not really, depends on who's on for the  
11 night. The -- the manifest changes, so, you  
12 know, depends on who I deliver to that night,  
13 that particular night. So it varies.

14 Q. Were the hours the same at the  
15 Baltic Street location?

16 A. Pretty much, yeah.

17 Q. Looking at paragraph 7 of  
18 Defendant's 50, it says, "During my employment  
19 with the defendants, I interacted with other  
20 drivers/food delivery employees on a daily  
21 basis, and know that my own experiences were  
22 typical of how these employees were supervised  
23 and compensated".

24 Do you see that sentence?

25 A. Yes.

1 T. Jackson

2 emergency room and get that taken care of.

3 Another time, I sprained my foot, so I had to  
4 go to the emergency room, get that taken care  
5 of. When I found out my mother had breast  
6 cancer, the day she had surgery.

7 Q. Did you use your own car when you  
8 performed deliveries?

9 A. Yes, I did.

10 Q. What car did you have in 2007?

11 A. At that time, I think I had a Sable, I  
12 think.

13 Q. What's that?

14 A. Sable.

15 Q. What --

16 A. Is it a Mercury Sable? Mercury Sable.  
17 I think that's the name of it.

18 Q. Did you have different cars between --

19 A. Yes, I did.

20 Q. How many different cars?

21 A. I had a Mercury Sable, and then I had a  
22 van that was a -- I forgot what kind of van it  
23 was. It was red. I forgot. And then I had a  
24 Ford Windstar, which is the van that I have  
25 now.

1 T. Jackson

2 Q. Did you have --

3 A. It was three cars in all.

4 Q. Did you own those cars?

5 A. Yes, they were mine.

6 Q. Do you have insurance for the cars?

7 A. Yes, I do.

8 Q. Who paid for the insurance?

9 A. I did.

10 (Whereupon, Manifests were  
11 marked as Defendant's Exhibit 51, for  
12 identification, as of this date.)

13 (Whereupon, a recess was taken  
14 at this time.)

15 Q. I'm now going to show you a document  
16 that's been marked as Defendant's Exhibit 51,  
17 which are Bate stamp numbered FD003415 to  
18 FD004192, and they've been represented to us as  
19 documents that set forth the number of hours  
20 you worked to support your claims in the  
21 complaint, and I'm going to ask you if you've  
22 seen those documents before today (handing).

23 MR. ANDREWS: Objection.

24 A. Yes.

25 Q. Does your handwriting appear on any of

1 T. Jackson  
2 A. Yes, it's the first stop.  
3 Q. 10:19 p.m.?  
4 A. Yes.  
5 Q. On the following page, being 3482, does  
6 that indicate the time of the last stop?  
7 A. Yes.  
8 Q. What time is that?  
9 A. Oh, actually not. I didn't do this one.  
10 Q. Meaning you didn't do the --  
11 A. I didn't -- I performed it, but I must  
12 have forgotten to put in the time.  
13 Q. The time before that for the last stop  
14 says 3:25.  
15 A. Yes.  
16 Q. Is that a.m.?  
17 A. A.m., yes.  
18 Q. The first delivery was made at  
19 10:19 p.m.?  
20 A. The first delivery, yes.  
21 Q. The second to last --  
22 A. That's not when I started though.  
23 Q. The first delivery was made at 10:19 --  
24 A. The first delivery.  
25 Q. -- p.m.?

T. Jackson

1

2

Q. P.m.?

3

A. Yes.

4

Q. That was in Rocky Hill, Connecticut?

5

A. Yes.

6

Q. Do you know how far Rocky Hill,

7

Connecticut is from the Brooklyn facility?

8

A. About two hours.

9

Q. Looking at FD003484, does that last row

10

indicate the last stop you would have made for

11

the May 23, 2010 route?

12

A. Yes.

13

Q. What time does that say?

14

A. 2:40.

15

Q. Is that 2:40 a.m.?

16

A. Yes.

17

Q. If you could, just keep looking for the

18

next set where you definitively recognize your

19

handwriting.

20

A. This one looks like my handwriting here,

21

this one (indicating).

22

Q. Now we're referring to --

23

A. FD003487.

24

Q. Is your handwriting also on FD003488?

25

A. Yes.

1 T. Jackson

2 eight, nine, ten, eleven on this one.

3 Q. What time does it say that the drop-off  
4 was for the last customer listed on that page?

5 MR. ANDREWS: Objection.

6 A. On this page, 1:52 a.m.

7 Q. You said that you also recognized your  
8 handwriting on the document FD003488?

9 A. Yes.

10 Q. Do you recognize your handwriting on  
11 FD003489?

12 A. Yes.

13 Q. This page (indicating).

14 A. Oh, I'm sorry. On this one, yes.

15 Q. That's your handwriting?

16 A. Yes.

17 Okay. So this is part of this one  
18 (indicating).

19 Q. Is 003488 to 003489 a manifest you would  
20 have received for May 16, 2010?

21 MR. ANDREWS: Objection.

22 A. Yes.

23 Q. Is that a complete manifest you would  
24 have received for that night?

25 MR. ANDREWS: Objection.



1 T. Jackson

2 A. Yes.

3 Q. Now you're looking at FD003490?

4 A. Yes.

5 Q. Is the complete manifest for  
6 May 16, 2010 contained on FD003488 through  
7 003490?

8 A. Yes.

9 Q. What time does it indicate the first  
10 drop-off was made?

11 A. 8:48 a.m. P.m. Sorry. P.m.

12 Q. What time does it indicate that the last  
13 delivery was made?

14 A. 2:25. Yeah, 2:25 a.m.

15 Q. That last stop was in Darien,  
16 Connecticut?

17 A. Yes. No. No. The last stop would have  
18 been New Canaan it looks like. It looks like  
19 New Canaan.

20 Q. What time is it at New Canaan?

21 A. 2:42.

22 Q. A.m.?

23 A. 2:42 a.m.

24 Q. Is there a reason the New Canaan was the  
25 last stop as opposed to Darien, Connecticut on

1 T. Jackson

2 A. Yes.

3 These two are together (indicating).

4 Q. Is that your handwriting on 3497?

5 A. No, but this does look like my husband's  
6 handwriting.

7 Q. Who is your husband?

8 A. Delroy McNeil.

9 Q. He performed --

10 A. No. Sometimes he would go with me.

11 Q. He would go with you?

12 A. Yes.

13 Q. He would fill out the manifest?

14 MR. ANDREWS: Objection.

15 A. Yes. It looks like he filled this one  
16 out for me.

17 Q. Would he ever take any of the meals to  
18 the doors when he was with you?

19 A. Yes, sometimes he did.

20 Q. How often did he go with you?

21 A. I can't really answer that.

22 Q. Every week?

23 Would he go with you once a night?

24 MR. ANDREWS: Objection.

25 A. No, more than that.

1 T. Jackson

2 Q. More than that?

3 A. Uh-huh.

4 Q. Three nights a week?

5 MR. ANDREWS: Objection.

6 A. I can't be specifically sure how many

7 nights.

8 Q. Would he be with you the entire time?

9 MR. ANDREWS: Objection.

10 A. Of the route?

11 Q. Yes.

12 A. The entire time that I'm on the route?

13 Q. Yes.

14 A. Yes.

15 Q. Did he go to the facility with you?

16 A. Yes.

17 Q. Did Syed ever see him?

18 A. Yes.

19 Q. Did Syed ever tell you you can't have

20 your husband --

21 A. No.

22 Q. -- performing deliveries with you?

23 A. No.

24 Q. Did anyone else ever go with you?

25 A. I don't remember. I don't think so.

1 T. Jackson

2 Q. When would the first delivery have been  
3 made on that route?

4 A. Looks like 8:12.

5 Q. P.m.?

6 A. P.m., yes.

7 Q. When was the last delivery?

8 MR. ANDREWS: Objection.

9 A. Looks like 3:54 a.m.

10 MR. ANDREWS: We should take a  
11 short break. It doesn't have to be this  
12 second, but we've been going for over an  
13 hour.

14 THE WITNESS: Okay.

15 Q. On 3782 to 3783, the deliveries are put  
16 in a certain order; is that correct?

17 A. This is the order that they gave it to  
18 me in, that Syed gave it to me in.

19 Q. Did you follow that order?

20 A. Not on this one.

21 Q. Did you tell Syed that you changed the  
22 order in which you delivered the meals that  
23 night?

24 MR. ANDREWS: Objection.

25 A. Any time he didn't put it in the correct

1 T. Jackson

2 A. Yeah, this is 3783.

3 I don't know what happened here. Okay.

4 It looks like -- okay.

5 Q. I'll ask this.

6 If you ever didn't deliver in the order  
7 that it was contained on the manifest, did you  
8 have to tell Syed?

9 A. Yes.

10 Q. What would you tell him?

11 A. If it wasn't in the order that it's  
12 normally done in, I would let him know.

13 Q. You would let him know?

14 A. Yeah.

15 Q. What would you let him know?

16 A. I would tell him that it's not in its  
17 correct order.

18 Q. What would he say?

19 MR. ANDREWS: Objection.

20 A. I don't know.

21 Q. Did he tell you that you have to do it  
22 on the order that it's on the manifest?

23 MR. ANDREWS: Objection.

24 A. No, he didn't tell me that I had to do  
25 it on this order because he didn't really know

1 T. Jackson

2 Connecticut the way I did.

3 Q. You were able to decide where to --

4 A. Put it in the correct order.

5 Q. You were able to make that decision?

6 MR. ANDREWS: Objection.

7 A. Yes.

8 Q. Did that happen on more than one  
9 occasion?

10 A. Depending on a manifest. I don't know  
11 how they -- the manifest wasn't always in its  
12 correct order. Sometimes it was, sometimes it  
13 wasn't.

14 MR. POLLACK: Why don't we take  
15 a break?

16 (Whereupon, a recess was taken  
17 at this time.)

18 Q. Is that your handwriting on the document  
19 FD003854?

20 A. Yes.

21 Q. Is that your handwriting on the back of  
22 the page on 3855?

23 A. Yes.

24 Q. Does 3854 to 3855 represent one route?

25 A. Yes.

1 T. Jackson

2 had completed the route?

3 MR. ANDREWS: Objection.

4 A. Were there times? I don't remember.  
5 Probably so.

6 Q. Did you take any breaks during the time  
7 you performed deliveries?

8 A. Did I take any breaks? I might have  
9 stopped and got coffee or something to eat.

10 Q. Would you take a break for any other  
11 reason?

12 A. To go to the bathroom --

13 Q. To get gas?

14 A. -- get coffee.

15 Yeah, gas, get something to eat,  
16 something to snack on.

17 Q. Did you ever go into a restaurant to  
18 eat?

19 A. To sit down and eat?

20 Q. Yes.

21 A. No.

22 Q. Would you ever call Syed to tell him  
23 that you were going to get something to eat?

24 A. No.

25 Q. Would you call him and tell him you were

1 T. Jackson

2 going to get gas?

3 A. No.

4 Q. You wouldn't call him if you were taking  
5 a break during the time you were performing  
6 deliveries?

7 MR. ANDREWS: Objection.

8 A. If I was going for something to eat or  
9 going for gas or going to the bathroom, no.

10 Q. Did you ever seek reimbursement for any  
11 expenses you incurred during the time you were  
12 performing deliveries?

13 A. The only reimbursement that we got was  
14 our tolls.

15 Q. Did you have any other source of income  
16 between 2007 and 2011 besides the payments you  
17 received for the work you performed as a driver  
18 for The Fresh Diet?

19 A. When I worked at PCF, which was at the  
20 beginning of me starting with Fresh Diet.

21 Q. Any other times?

22 A. Not that I can recall.

23 Q. Were taxes ever withheld from your  
24 payments from Late Night?

25 A. Was taxes ever taken out of my check?



## 1 I N D E X

2

3	WITNESS	EXAMINATION BY	PAGE
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5		Peter J. Andrews	110

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## 7 E X H I B I T S

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## 19 REQUESTS FOR PRODUCTION

20

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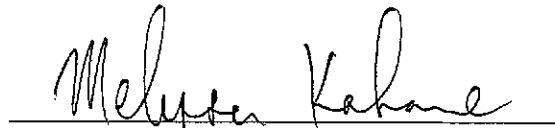
## C E R T I F I C A T E

I, MELISSA KAHANE, hereby certify that the Examination Before Trial of TERESA JACKSON was held before me on the 2nd day of October, 2013; that said witness was duly sworn before the commencement of her testimony; that the testimony was taken stenographically by myself and then transcribed by myself; that the party was represented by counsel as appears herein;

That the within transcript is a true record of the Examination Before Trial of said witness;

That I am not connected by blood or marriage with any of the parties; that I am not interested directly or indirectly in the outcome of this matter; that I am not in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of October, 2013.

A handwritten signature in cursive script, reading "Melissa Kahane", is written over a horizontal line.

MELISSA KAHANE

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2	PAGE/LINE	CORRECTION
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